

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1942 of 2021

Date	Order with signature of Judge
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For hearing of bail application :

29.11.2021 :

Syed Zia Husain Shah, advocate for the applicant / accused.

Mr. Saleem Akhtar, Addl. P.G.

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NADEEM AKHTAR, J. – Through this bail application under Section 497 Cr.P.C., the applicant / accused Zafar Khan seeks admission to post-arrest bail in Crime No.661/2021 registered against him on 17.08.2021 at P.S. Saeedabad Kemari Karachi South, under Sections 6 and 9(c) of The Control of Narcotic Substances Act, 1997 (**'the Act of 1997'**). The applicant / accused had filed Criminal Bail Application No.4330/2021, which was dismissed by the learned Additional Sessions Judge-VIII Karachi West / MCTC vide order dated 03.09.2021.

2. The case of the prosecution, as set up in the subject FIR, is that during the patrolling of the area by the police party on the date and at the time and place mentioned in the FIR, 2,450 grams of charas was recovered by the police from the applicant which was seized and sealed on the spot.

3. It is contended by learned counsel for the applicant that there is malafide on the part of the police as the applicant has been falsely implicated in the subject crime with an ulterior motive ; the alleged recovery has been foisted upon the applicant ; there is no independent witness of the alleged crime ; the applicant went missing on 11.08.2021 whereafter his brother filed an application before the SSP concerned for his recovery ; due to this reason, the case set up by the prosecution has become doubtful ; the matter requires further inquiry ; the applicant has no previous criminal record ; and, there is no apprehension that the evidence will be tampered with or that the witnesses of the prosecution will be influenced by the applicant, or he will abscond if he is released on bail. In support of his submissions, the learned counsel relied mainly on Muhammad Noman V/S The State and another, 2017 SCMR 560.

4. On the other hand, learned Addl. P.G. contends that the FIR clearly shows that a substantial quantity of charas was recovered from the applicant which was immediately seized and sealed on the spot ; the role of the applicant

in relation to the commission of the subject offence is specific and clear in the FIR ; there was no delay in lodging the FIR or in sending the narcotic substance recovered from the applicant for chemical examination ; and, the report submitted by the Chemical Examiner supports the case of the prosecution. He further contends that as per the CRO of the applicant, he is a habitual offender as eight other FIRs have been registered against him under the Act of 1997 and The Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019. The allegation of malafide and ulterior motive on the part of the police officials has been specifically denied by the learned Addl. P.G. It is further contended by him that the offence committed by the applicant falls within the ambit of Clause (c) of Section 9 of the Act of 1997, and accordingly it falls within the prohibitory clause of Section 497 Cr.P.C.

5. I have heard learned counsel for the applicant and learned Addl. P.G. and have carefully examined the material available on record including the test report submitted by the Chemical Examiner after examining the charas allegedly recovered from the applicant. According to the aforementioned test report, the gross weight and net weight of charas was 2,450 grams and 2,427 grams, respectively. The charas (cannabis) allegedly recovered from the applicant falls within category (i) specified in Clause (s) of Section 2 of the Act of 1997 substituted through The Control of Narcotics Substance (Sindh Amendment) Act, 2021, and the net weight thereof is more than double the maximum limit of one kilogram (1,000 grams) prescribed in Clause (b) of Section 9 *ibid*. Therefore, this is not a borderline case between the said Clauses (b) and (c). In Muhammad Noman (supra) relied upon by learned counsel for the applicant, the family of the accused had filed a habeas corpus petition due to his illegal abduction by unknown persons ; whereas, in the instant case except for filing an application before the SSP concerned, no further steps were admittedly taken in relation to the alleged abduction of the applicant. Merely filing of such application does not entitle the applicant to the concession of bail, especially when the offence alleged against him falls within the prohibition contained in Section 51 of the Act of 1997 and Section 497 Cr.P.C. The cases cited and relied upon by learned counsel for the applicant cannot be applied in the instant case as the facts and circumstances therein were clearly distinguishable.

6. The punishment of the offence falling under clause (c) is death or imprisonment for life or imprisonment for a term which may extend to fourteen years. Thus, the prohibition contained in Section 51 of the Act of 1997 shall

apply to this case, and it also falls within the prohibitory clause of Section 497 Cr.P.C. Therefore, the applicant is not entitled to the concession of bail and there appears to be no exception to this rule in the facts and circumstances of the instant case.

7. The above view is fortified by Muhammad Noman Munir V/S The State and another, **2020 SCMR 1257**, and Bilal Khan V/S The State, **2021 SCMR 460**. In the former case, 1,380 grams of cannabis and 07 grams of heroin were recovered from the accused, and in the latter case the quantity of the recovered ice was 1,200 grams. In both the said authorities, the concession of bail was declined by the Hon'ble Supreme Court by holding that the prohibition embodied in Section 51 of the Act of 1997 was applicable thereto. It was also held in Muhammad Noman Munir (supra) that the non-association of a witness from the public and his non-cooperation was a usual conduct symptomatic of social apathy towards civic responsibility ; and, even otherwise the members of the contingent being functionaries of the State are second to none in their status, and their acts statutorily presumed, *prima facie*, were *intra vires*.

8. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence produced / to be produced by the prosecution and the defense before the trial Court. Therefore, it is clarified that the observations made herein are tentative in nature which shall not prejudice the case of either party nor shall influence the learned trial Court in any manner in deciding the case strictly on merits in accordance with law.

9. In view of the above, the instant bail application is dismissed with direction to the learned trial Court to conclude the trial of the subject case within two (02) months strictly in accordance with law. Let this order be communicated to the learned trial Court for compliance.

J U D G E